IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 595 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

VIJAYBHAI SAUJIBHAI LEUVA

Versus

STATE OF GUJARAT

Appearance:

MR SA BAQUI for Petitioners

R.M. Chauhan, APP for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 29/01/98

ORAL JUDGEMENT

The learned Addl. City Sessions Judge, Court No.15, refused to discharge the petitioners, of the offences punishable u/s. 302, 304-B, 498-A, 143 and 147 I.P. Code passing necessary order dt. 11h Nov. 1997 below an application (Ex. 3), preferred in Sessions Case No. 203/97. The legality and validity of the said order is under challenge in this Revision Application.

2. Vithalbhai Becharbhai Makwana resides in Jivan

Jyot Chawl in Amraivadi area of Ahmedabad. Ranjanben aged about 25 years was his daughter. She had studied upto Standard IV. Before about 9 years she married the petitioner No.1 who is serving in a Mill. The petitioner No.4 is the mother-in-law of Ranjanben, while the petitioners Nos. 2 & 6 are the Jeths, and the petitioner No. 3 is the Jethani of Ranjanben. Manguben the petitioner No.5 is the Nanand of Ranjanben. The petitioner Nos. 2, 3, 5, 6 reside near to the room in which Ranjanben and the petitioners Nos. 1 & 4 were residing. Initially after the marriage, Ranjanben had no problem; her married life was happy. For the purpose of first delivery Ranjanben had gone to her father's place. She was delivered with a male-child. Some time thereafter she went back to her matrimonial house. Her in-laws then started to excruciate her. Torturing and tormenting became the routine. She was taunted with the urrerance what her father would give, he was a cadger, because after the first delivery the in-laws were expecting high qua `Jiyana'. They believed that father of Ranjanben would give transcendent clothes, ornaments and valuable things. The dejected petitioners then heavily came down upon Ranjanben. Her palmy-days were therefore gradually withering away. She was beaten and ill-treated. However Ranjanben used to keep her chin up. As her miseries & woes were going berserk, she went to her natal house and had to be in sullen for about 3 years Babubhai Ajabhai, Kanjibhai Panchanbhai & Somabhai Becharbhai assembled and disentanged, and Babulal, the brother of petitioner No.4 took Ranjanben to her matrimonial house giving assurance that she would never be ill-treated. Thereafter for the second delivery Ranjanben went to her natal-house. She was delivered with a female child named Falguni. After few months she went back to her husband. The petitioners were not happy. They wanted to get the room occupied by Ranjanben and the petitioner No.1 vacated any how. They then cabaled. On 14-1-97 Ranjanben and the petitioner No.1 had been to the place of Vithalbhai Becharbhai and had gone back with joyous mood after a chit-chat. On 16.1.97 around 10.00 p.m., the petitioners, who had forming unlawful assembly planned to do her away with, burnt Ranjanben to death along with Falguni-small child. A complaint came to be lodged with Vatva police station, by the father of deceased Ranjanben. At the conclusion of investigation, the police filed a chargesheet in the court of Metropolitan Magistrate, Ahmedabad. The learned Metropolitan Magistrate, Court No.19, committed the case to the City Sessions Court, Ahmedabad, as he was not competent to try the murder case. The case then came to be registered as Sessions Case No. 203/97. Before the

learned Addl. City Sessions Judge-Ahmedabad the petitioners presented the application and urged to discharge them as no case was made out even prima facie to frame the charge against them and hold the trial. The learned Addl. Sessions Judge rejected the application. It is against that order this Revision Application is filed.

3. It is the contention of Mr. Baqui, the learned advocate for the petitioner that the learned Addl. Sessions Judge fell into error of law while rejecting the application. Without any application of mind and perusing the police papers, he mechanically rejected the application for the discharge. The learned Judge has also taken no pains to assign reasons for drawing his conclusion. He perfunctorily passed the order. The learned Judge also missed to note that here is the case wherein without any cause, victim's in-laws, as many as possible, are roped in, may be to satisfy complainant's ill-will or because of prejudices or wrong-belief or ill-based logic. He then drew my attention to a decision of the Apex Court rendered in the case of Satish Mehra vs Delhi Administration - 1996 (3) Crimes 85 (SC) wherein it is laid down that when a Judge is certain that there is no prospects of the case ending in conviction, valuable time of the court should not be wasted for holding the trial only for the purpose of formally completing procedure to pronounce conclusion on a future day. He has at last urged to allow this Revision Application, set aside the order and discharge the petitioner without framing charge. The learned APP has made sincere attempts but of course unproductive, to convince the court that the impugned order is quite just and proper, in all respects.

4. According to the learned Addl. Sessions Judge, at this stage with meticulous care & finicky details the materials in police papers are not to be weighed, but whether there is a prima facie case to frame the charge will be the guiding factor. He then it seems perused the papers and rest contented by saying that it cannot be said that there is no prima facie case against the petitioners-accused. At one stage, he has observed that qua the dowry the petitioners were constantly picking the quarrels. Assigning such reasons he rejected the application which is not just and proper. What he noticed ought to have been stated in brief. I have therefore perused the statements of the witnesses recorded by police, Dying Declaration and the P.M. Note putting several queries to the learned APP.

5. Before I do so, it may be stated that ordinarily at the stage of framing the charge, the materials on police papers are required to be generally considered and not with a view to see whether the same is sufficient for holding the accused guilty. Even if there is a strong suspicion favouring the accused, the same cannot prevail at that stage of framing the charge, but if taking the facts on their face value, neither of the ingredients constituting the alleged offence is emerging from the materials on the police papers, or there is no case worth the name to frame the charge, or as made clear by the Apex Court in the case of Satish Mehra (Supra) if there is no possibility of the case ending in conviction, the court will have no option but to hold that there is no prima facie case to proceed against the accused framing the charge, and discharge the accused.

6. The copy of the FIR is produced at Page 22. The father of the deceased while lodging the complaint has narrated the facts stated above and has further made it clear that when on 14th January 1997 the deceased along with petitioner No.1 had visited his place he tried to know how the marriage life was going on, to which the deceased replied saying "well". Thereafter, on 16th January 1997 after the incident at 3.00 p.m. Amrutlal Ramjibhai went to his place and informed about the incident. He therefore went to L.G. Hospital at 4.00 p.m. and though he tried to know putting question the deceased did not reply but demanded water to drink and submitted that the small son `Chintu' might not be kept there meaning thereby not to be kept in the custody of the petitioners. Thereafter, his daughter the deceased died at 6.30 p.m. When he inquired with petitioners Nos. 2 & 6 about happening of incident he was apprised that when the deceased was making the water for bath hot putting the pot on the stove accidentally her saree was caught in the stove blaze and because of the burns injury she died and small baby Falguni who was lying in her lap also succumbed to the burn injuries. At last he has expressed a doubt against all the petitioners and lodged the complaint.

7. Somabhai Becharbhai Makwana gave the statement before the police. He is the brother of the complainant. He has stated about the facts till 14th January 1997 which in short I have hereinabove stated. On 16th January 1997 hearing about the incident he went to the L.G. hospital at 3.30 p.m. Deceased Ranjanben was unconscious and was not in position to speak. She died at 6.00 p.m. He also came to know from the petitioners that when a pot of water placed on the stove for making

the water hot was being lifted for taking it off the stove suddenly the saree was caught in the flames of the stove, with the result deceased sustained burn injuries and baby Falguni who was in her lap also sustained injuries, and both succumbed to the injuries later on. Thereafter on some assumptions or suspicion this witness believes that all the petitioners might have committed the wrong. This witness does not likewise the complainant, have any personal knowledge.

8. Jitendra Vithalbhai Makwana, a brother of the deceased has also stated the fact which abovestated two witnesses have stated and while concluding his statement, he has on the basis of the suspicion, assumed that the petitioners had forming the unlawful assembly done away with the deceased. These three witnesses thus state about ill-treatment that had once taken shape in the past, and not about unlawful assembly, its common object, murder or dowry death.

9. Manabhai Nathabhai Makwana, Devendra Joitaram Jadav, Bavabhai Ajabhai, Bansibhai Dholabhai, Narottambhai Ishwarbhai, Jayantibhai Khushalbhai, who are residing in the neighbourhood or at a little distance from the place of incident, have stated that deceased Ranjanben married and some times thereafter vile events commenced to happen. Narrating about the events viz., Ranjanben had to reside at her natal place, how the compromise was arrived at, what happened after the first delivery, and when they heard about the illtreatment etc.,they have while concluding expressed their suspicion that the petitioners might have done the wrongs, because they do not have personal knowledge. Manguben the mother of the deceased has also alike her husband stated the facts before police. Bhartiben is the wife of the brother of the deceased. She has also stated the fact of illtreatment that came into being after the first delivery. She also came to know, from her mother-in-law and those others who had been to the deceased's place on the day of the incident, that when the deceased was trying to bring down the pot from over the stove her saree accidentally coming in contact with the flame, she sustained burn injuries owing to conflagration. Falguni who was in her lap also sustained burn injuries. Both later on succumbed to the same. Remembering the past alike other witnesses she also having prejudicial approach assumed without any good cause and suspected that petitioners had done away with the deceased forming unlawful assembly.

10. From the abovereferred statements of the

witnesses, there is nothing except ill-based assumption of the witnesses or suspicion or bitter feelings to connect allor either of the petitioners with the offences punishable under Section 302, 304-B, 143 & 147, Indian Penal Code. Though matter of illtreatment had become the aquondam or a history they exhumed the same with a view to justify their belief. There is absolutely no evidence to hold, or even to form the opinion that all the petitioners formed the unlawful assembly, the common object of which was to cause murder of the deceased, and in furtherance of that common object all did the wrongs. When query was made, the learned APP fairly conceded that there was absolutely no evidence to even prima facie connect either of the petitioners with abovestated offences except the offence punishable under Section 498-A, I.P.C. Though hearing the shrieks several other persons from the neighbourhood rushed to the scene of incident and tried to save the deceased Ranjanben & Falguni, statement of neither of such persons is recorded by the police and no reason is assigned why police did not think it proper to record the statements of those witnesses. Had the statements of such witnesses been recorded, it would have thrown light on the issue as to whether any of the petitioners at that time was in the house, or any one saw either of the petitioners running away from the house or doing something pointing to their guilt. Their say would have given a clue to form a particular opinion or draw certain conclusions which is not at all possible, from the above referred statements. In the P.M. Note, the cause of death as per the Doctor's opinion is "shock" a result of the burns, but that would not connect either of the petitioners with the alleged offences. Of course, the FSL report shows that some particles of kerosene were found on the pieces of clothes or burnt pieces of cloth were smelling of kerosene and therefore the prosecution is led to believe that some one with the help of others might have poured kerosene on the person of Ranjanben and set on fire, but the Panchnama of the scene of offence drawn shows only the presence of stove, but nowhere shows the presence of marks of pouring of kerosene on the floor or elsewhere in the room where the deceased is alleged to have sustained burns injuries. When small baby-Falguni was in the lap, no one would set on fire, but in this case Falguni is injured and has died of burns.

11. The incident has happened 9 years after the marriage. So one of the essential ingredients of dowry death is lacking. Even if it is believed that with regard to Jiyana the deceased was illtreated, the same would not fall within the definition of `dowry' given

vide Section 2 of the Dowry Prohibition Act. Section 304-B therefore finds no place.

12. Apart from such facts, the dominating factor cannot be lost the sight of. After Ranjanben was admitted in the hospital for treatment by her in-laws, i.e., petitioners, the Executive Magistrate was called for recording her dying declaration. Of course, there is some discrepancy about the time at which it commenced and the time at which it was concluded, but the fact stated by the deceased before the Executive Magistrate on which the prosecution also relies cannot be ignored. The deceased has categorically made it clear that she sustained burns injuries when she after putting down the pot of water puffed to extinguish the flame her saree was caught in the flames and she sustained the injuries, and Falguni too because she was in her lap. She blames no one in the family and also categorically negatives the case & say about quarrels or illtreatment. She, therefore, in her dying declaration says that the incident happened accidentally and no one is responsible for the same. When thus she exonerates each of the petitioners, it cannot be said that there is a prima facie case to proceed against either of the petitioners framing the charge. In view of her such dying declaration, the above referred statements & materials on police record gain no ground to stand upon, and lose the credence.

13. However, the petitioner No.1 cannot be exonerated. So far as the offence punishable under Section 498-A I.P. Code is concerned, it may be remembered that neither of the petitioners except petitioner No.1 resided with the deceased. All others were residing in their premises at a little distance away from the premises in which the deceased was residing. According to the above referred statements tormenting and torturing qua "Jiyana" were from the petitioner No.1, and Ranjanben was ill-treated especially by petitioner No.1. Of course on 14th Jan. 97, two days prior to the incident, petitioner No.1 and Ranjanben went to the complainant's house there was not even a whisper from Ranjanben about illtreatment. On the contrary everything was going well was the reply, but for the present at the most it can prima facie be said that there may be illtreatment from petitioner No.1 because he did not get the things he expected at the time of `Jiyana' after the birth of a son. There is, therefore, a prima facie case against petitioner No.1 so far as the offence punishable under Section 498-A, I.P.Code is concerned. Considering these facts on police record, the learned Additional

Sessions Judge partly fell into error in holding that there is a prima facie case against all the petitioners to frame the charge as requested by the prosecution. In fact, there is no evidence against petitioners Nos. 2 to 6 and therefore they are required to be discharged. With some ulterior motive, or under mistaken impression, or because of certain prejudices as submitted by Mr. Baqui, these petitioners are involved though there is no evidence whatsoever against them to connect them with any of the offences. The only evidence so far as petitioner No.1 is concerned, is regarding the offence punishable under Section 498-A of Indian Penal Code. There is absolutely no evidence to connect him with other offences and to connect other petitioners with any of the offences except the suspicion expressed by the witnesses. On that count, even if they are tried, ultimately as discussed above, the case will result in acquittal even if evidence as per statements in verbatim is brought on record. In view of the decision of Apex Court in Satish Mehra's case (Supra) necessary order must be passed at this stage rather than at a later stage after a trial, wasting court's time.

14. For the aforesaid reasons, this revision application is partly allowed. The impugned order dated 11.11.97 passed by the learned Additional City Sessions Judge, Court No.15 in Sessions Case No. 203 of 1997 below application Exh. 3 is hereby set aside so far as the charges of the offences punishable under Sections 302, 304 (b), 143, 147 are concerned, and all the petitioners stand discharged of those charges. The order so far as it relates to the charge under Section 498-A I.P.C. qua the petitioners Nos. 2 to 6 is concerned, is also hereby set aside, and the petitioners Nos. 2 to 6 stand discharged of the same, while the said order so far as it relates to the offence punishable under Section 498-A, I.P.C., qua the petitioner No.1, is hereby maintained.

15. The learned Additional City Sessions Judge shall undergoing the formalities under Section 228 (1)(a) Criminal Procedure Code, so far as it relates to petitioner No.1, remit the case papers & R & P back to the learned Chief Metropolitan Magistrate for hearing and disposal in accordance with law. The petitioners Nos. 2 to 6 stand discharged of all the charges levelled against them in the chargesheet, while the petitioner No.1 shall answer the charge under Section 498-A I.P. Code, facing trial. Rule to the aforesaid extent is made absolute.

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(RMR)